

APPEAL NO. 030253
FILED MARCH 11, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 13, 2003. The hearing officer determined that the compensable injury of _____, does not include an injury to the cervical spine. The appellant (claimant) appeals and the respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Initially we consider carrier's assertion that the appeal was not timely filed because it was not served upon the carrier. Claimant's failure to properly serve the carrier does not affect the timeliness of the appeal; rather, it extends the time for the respondent to file a response to the appeal. Texas Workers' Compensation Commission Appeal No. 94101, decided March 8, 1994; Texas Workers' Compensation Commission Appeal No. 92051, decided April 30, 1992. Therefore, we dismiss carrier's assertion that claimant's appeal was untimely filed as being without merit.

The claimant, in her appeal, quarrels with the manner in which the hearing officer gave weight and credibility to the evidence. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

The record in this case presented conflicting evidence for the hearing officer to resolve. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**BEN SCHROEDER
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Roy L. Warren
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge